

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

LOUIS EFRAIN COOPER,

Petitioner,

v.

**CIVIL ACTION NO. 3:05-cv-108
CRIMINAL ACTION NO. 3:04-CR-21
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

**ORDER VACATING
ORDER ADOPTING REPORT AND RECOMMENDATION**

By Standing Order entered on March 24, 2000, this action was referred to United States Magistrate Judge James E. Seibert for submission of proposed report and a recommendation ["R & R"]. Magistrate Judge Seibert filed his R & R on June 18, 2007 [Civ. Doc. 4]. On July 10, 2007, this Court adopted the magistrate's R&R [Civ. Doc. 5]. Objections to Magistrate Judge Seibert's R & R were due by July 2, 2007, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). No objections were filed.

Accordingly, the Court adopted the recommendations of Magistrate Judge Seibert [Civ. Doc. 5]. In that Order, the Court denied and dismissed the petitioner's § 2255 petition [Civ. Doc. 1], and Ordered that the matter be removed from the Court's docket.

On July 19, 2007, the Court discovered an error in its July 10, 2007, Order Adopting Report and Recommendations [Civ. Doc. 5]. Additionally, the petitioner filed a Motion for Reconsideration of the same [Crim. Doc. 70]. Accordingly, the Order Adopting Report and Recommendations [Civ. Doc. 5] is hereby **VACATED**, and the petitioner's Motion to Reconsider [Crim. Doc. 70] is **GRANTED**. Therefore, the petitioner's 2255 petition [Civ.

Doc. 1] is **ORDERED REINSTATED**. This Court now **ORDERS** that all the petitioner's claims be **DENIED except the fourth claim** that the petitioner's counsel failed to file a notice of appeal. Magistrate Judge Seibert has Ordered an evidentiary hearing be set [Crim. Doc. 69] for September 11, 2007, at 11:00 a.m., solely on the issue of whether petitioner instructed his counsel to file an appeal. This Court will await the Magistrate Judge's report and recommendation on that outstanding claim.

The Clerk is directed to mail copies of this Order to all counsel of record and the petitioner.

DATED: July 20, 2007.

/s/ John Preston Bailey
JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE